



MEMORANDUM

Department of Natural Resources
Division of Mining, Land and Water
Water Resources Section

STATE OF ALASKA

TO: Kris Hess
Division Operational Manager

FROM: Ben White
Southeast Regional Office Manager

DATE: August 4, 2017

SUBJECT: Wrangell Junkyard Repository Update

Background: DEC and DNR DMLW have been working to resolve a contaminated site issue in the community of Wrangell. The Wrangell Junkyard Repository site needs to be relocated and stabilized. DNR DMLW has been working with DEC on site selection and the possible use of material sites on Wrangell Island to help reduce the cost of the project. A material pit on State land, accessed using Pat's Creek Road (National Forest Service Road 6259), that no longer produces suitable material for road construction was selected based on containment, site control and lack of hydrological connection to any anadromous fish streams. Material from the Wrangell Junkyard Repository Site (City of Wrangell land adjacent to Mental Health Trust Lands) would need to be transported over Zimovia Highway and NFS 6259 into the material site where a stable monofill will be constructed.

Issues: US Forest Service Road Use Permit – DEC was recently informed that their contractors would be required to obtain a road use permit from the US Forest Service for commercial use of the Forest Service Road (NFS 6259) from Zimovia Highway to the spur road that leads to the State-owned material site. The road in question was retained in a right-of-way (100 feet total width) when the land was patented to the State of Alaska. USFS roads are subject to rules and regulations of the Secretary of Agriculture, and, although public use is generally allowed, roads may be closed or use restricted to fulfill resource management objectives. Therefore, USFS roads are not the same as "public roads" as referred to under 23 U.S.C. 101(a).

According to the USFS Pacific Northwest Region website - commercial use of USFS roads are prohibited in the region without an authorization. This prohibition is enacted under individual forest order pursuant to 36 CFR 261.54. Authorization can take the form of a Contract, Road Use Permit, Easement, Cooperative Agreement, or letter of authorization. Also, each National Forest has issued a set of Commercial Road Rules which are incorporated into these authorizations. The rules list operational constraints on the road system including those pavements and structures that have restrictions because of weight or size limitations.

A commercial operator that needs to use USFS roads must contact the local National Forest and request a permit to haul over USFS roads. In a meeting yesterday with the USFS Wrangell District, DEC was provided an application for a road use permit. DEC was informed that hauling material from the

Wrangell Junkyard Repository site to the material site would be considered commercial use. The application will be reviewed for loads in excess of state law as state traffic laws apply to USFS Roads unless greater or lesser limits have been established by individual order (36 CFR 212.5).

As an adjacent landowner, the State should have access rights to the land. In 2006 the USFS and the State of Alaska through DNR and DOT&PF entered into a Memorandum of Understanding that outlined commitments to assure access to land, and resources. According to the Forest Service Road System Operations and Maintenance Handbook (FSH 7709.59) under Access Rights – they are to “permit reasonable access, either permanent or temporary, including access to mineral rights, to private landholders whose land is entirely or partially surrounded by National Forest System lands. **These rights may be exercised on National Forest System Roads open to unrestricted motorized public use without a written authorization** (emphasis added). Authorize reasonable use in writing if the use conflicts with designation, road regulations, or orders.

USFS requirement of NEPA – During the meeting yesterday DEC was also informed that prior to issuing any road use permit the USFS Wrangell District would be required to fulfill the requirements outlined in the National Environmental Policy Act (NEPA). When asked what the process, statutory requirements and anticipated information needed, and timeline to complete this effort were asked of the USFS Wrangell District Ranger the response was vague and uninformative.

Requiring an environmental analysis that would satisfy NEPA for use (commercial or otherwise) of an existing road seems excessive. DEC has committed to maintaining the road during use, control of invasive species, and are ensuring the use of stormwater pollution prevention Best Management Practices. Even if the USFS determined that commercial use of an existing Forest Service road required an environmental assessment consistent with NEPA, there are several categorical exclusions that the USFS could select for this use. When evaluating the use of a categorical exclusion there are resource conditions that need to be considered such as federally listed threatened or endangered species, impacts to critical habitat, USFS sensitive species, impacts to floodplains, wetlands and watersheds, designated wilderness areas, impacts to American Indians and Alaska Native Tribes cultural or religious sites and impacts to historic or archaeological sites. Use of an existing road to access State land would not impact any of these extraordinary circumstances. According to the USFS National Environmental Policy Act Handbook (FSH 1909.15 - Chapter 30) there are two categories of categorical exclusions that the USFS can utilize (undocumented and documented with the use of project or case file and a decision memo) to satisfy their NEPA requirements. Under 36 CFR 220.6(d)(4) allows the USFS to conduct repair and maintenance of roads, trails, and landline boundaries. This categorical exclusion can be used to authorize a user to grade, resurface, and clean culverts of an established NFS road – which the State is proposing to do while using the road. Under 36 CFR 220.6(d)(8) the USFS is allowed to approve, modify or continue short term (1 year or less) special uses of the National Forest System lands. For approval, modification, or continuation of minor special uses of NFS land that require less than 5 contiguous acres of land and a case file and decision memo the USFS would use 36 CFR 220.6(e)(3).

DNR DMLW Southeast Regional Office (SERO) has concern that the USFS Wrangell District’s interpretation and stance on use of the NFS road will set a precedent in the region as there are numerous material sites, subdivisions, timber sales, and other general State land within the region in which the only access to the land is with the use of a USFS road. Should all material sales in the region be required to obtain commercial road use permits and go through a lengthy NEPA process it will have an impact on the use of State land.

Recommendations:

- DEC has consulted with the Attorney General's Office regarding NEPA triggers and "federal involvement" in regards to EPA's technical assistance on the design and limited funding.
- DNR needs to determine if the MOU between the USFS and the State (attached) has been applied to NFS Road 6259, and if not can we establish a reciprocal agreement to conduct the Wrangell monofill project.

Wrangell Junkyard Repository Site.



Material Site to be used for the construction of the proposed monofill.

